

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

KERN HIGH SCHOOL DISTRICT,

V.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2025090582

DECISION

November 7, 2025

On September 12, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Kern High School District, naming Mother on behalf of Student. Administrative Law Judge Alexa Hohensee heard this matter by videoconference on October 7, 8, and 9, 2025.

Attorneys Monica Batanero and Anna Wood represented Kern High School District, called Kern. Jennifer Anderson, Kern's Director of Special Education, attended all hearing days on Kern's behalf. Student was not represented by an attorney. No appearance was made for Student. OAH delayed the hearing for 15 minutes and called Mother and left a voicemail message encouraging Mother to appear. OAH delayed the

hearing for another 15 minutes to allow Mother additional time to appear. Despite notice of the due process hearing served on Mother on September 17, and October 1, 2025, by telephone, electronic mail and express, ground service delivery, Mother did not appear.

Pursuant to Kern's request, the matter was continued to October 27, 2025, for Kern to submit a written closing brief. The record was closed, and the matter was submitted on October 27, 2025.

ISSUES

In this Decision, a free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Kern's IEP offer, developed on May 2, and May 21, 2025, constitute a FAPE such that Kern may implement the IEP without parental consent?

Both Kern's complaint and the October 1, 2025 prehearing conference Order refer to a May 2, 2025 IEP that was "amended" on May 21, 2025. This is a minor misstatement. Kern did not complete an IEP or make a FAPE offer until May 21, 2025. Accordingly, Issue 1 is rephrased to refer to the development of Kern's FAPE offer over two IEP team meetings. The administrative law judge may rephrase an issue so long as no substantive change to the issue is made. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189.)

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2. Is Kern entitled to conduct assessments of Student in executive functioning and social emotional processing pursuant to the July 17, 2025, assessment plan without parental consent?

On the first day of hearing, Kern asked that Issue 2 be expanded to include that Kern sought a psychological processing assessment, as well as assessments of executive functioning and social emotional status. Although the July 17, 2025 assessment plan does seek three assessments, Kern's complaint, and Kern's prehearing conference statement sought only permission to assess Student for executive functioning and social emotional status. The IDEA specifically states that the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the complaint, unless the other party agrees. (20 U.S.C. § 1415(f)(3)(B); see also Ed. Code, § 56502, subd. (i).)

Accordingly, Issue 2 remains as stated in the complaint and prehearing conference Order.

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, called the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. §§ 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

In this proceeding, Kern had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 15 years old and in 10th grade at the time of the hearing. Student and his sibling resided with Mother within Kern's geographic boundaries at all relevant times. Student was eligible for special education under the category of speech or language impairment due to articulation errors that affected his intelligibility.

ISSUE 1: DID KERN'S IEP OFFER, DEVELOPED ON MAY 2, AND MAY 21, 2025, CONSTITUTE FAPE SUCH THAT KERN MAY IMPLEMENT THE IEP WITHOUT PARENTAL CONSENT?

Kern contends that, despite exhaustive but unsuccessful efforts to obtain Parents' participation in the IEP process, Kern created an appropriate IEP for Student at the May 2, and May 21, 2025 IEP team meetings. Kern asserts it met all procedural requirements and offered Student a substantive FAPE.

THE MAY 2, 2025 IEP TEAM MEETING MET PROCEDURAL REQUIREMENTS

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Andrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000](*Andrew*).

When a school district seeks to demonstrate that it offered a FAPE to a particular student, it must first show that it complied with the procedural requirements of the IDEA. (*Rowley, supra*, 458 U.S. at 206-207.) Second, the school district must show that the IEP developed through those procedures was designed to meet the child's unique needs in accordance with the *Andrew* standard. (*Andrew, supra*, 580 U.S. at p. 403.)

2024-2025 SCHOOL YEAR

Student enrolled in Kern for ninth grade at the beginning of the 2024-2025 school year. Student had a four-year-old IEP dated November 6, 2020, from his prior school district. It identified Student as eligible for special education under the category of speech or language impairment.

In compliance with that IEP, Kern placed Student in a general education classroom, with 160 minutes per month, or 40 minutes per week, of speech and language services to work on two goals for articulation of r-sounds and fluency deficits.

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Student was a confident young man. Despite some articulation errors and an occasional mild stutter, he participated readily in classroom discussions and volunteered to present group projects. Multiple teachers testified credibly at hearing that Student did not seem bothered by his mild speech impediments, although they found his intelligibility to be impacted at times.

Student strongly disliked being pulled out of core classes for speech services. By August 2024, he had been working for over three years on sounding out the letter “r” and r-blend words and learning techniques to manage stuttering. At Kern, Student initially resisted going to speech services, and would only leave his elective classes, not core classes. Eventually, Student refused to go to the speech room at all. Student strongly self-advocated to his speech provider and teachers that he was not a special education student and did not need special education services.

KERN’S ASSESSMENT OF STUDENT

At Mother’s request, Kern conducted assessments of Student over September and October 2024. Mother was concerned Student had problems with speech, social emotional functioning, mobility, and had autistic-like behaviors. Student was diagnosed with Bell’s Palsy, had slightly misaligned feet, and in the past wore leg braces at night. Kern conducted assessments in psychoeducation, speech and language, physical therapy, and orthopedic impairment.

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There were no recent assessments from the prior school district. Special education students must be assessed no less than every three years. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) Kern intended to hold an IEP team meeting to review the assessments when they were completed as a three-year review IEP team meeting, called a triennial IEP team meeting, by Kern.

On the psychoeducational assessment by school psychologist Melissa Salazar, Student scored in the average, high average, or extremely high range in all five areas of psychological processing. His cognitive ability score was high average. In separate tests of attention, executive functioning, auditory, phonological processing, and cognitive processing, Student scored solidly in the average range on each.

On tests of academic achievement administered by credentialed special education teacher Mallorie McClintock, Student scored mostly in the average range. He had one high average score in word attack skills. He had a few low average scores in reading, calculation, and reading recall, with one low score in passage comprehension.

In classroom observations, Student engaged in lessons as much or more than his peers and was not off task. Outside the classroom, Student was very social and engaged in back and forth conversations with his peers. On behavior rating scales, Student self-reported himself as average in all categories, which suggested he viewed himself as well-adjusted with no significant behavioral, emotional, social, or school-related concerns. Math teacher, Jose Castro, rated Student similarly, except for an at-risk score in functional communication. Castro was concerned Student had some difficulty expressing himself, although Castro testified that did not stop Student from contributing in class.

On autism rating scales, one teacher rated Student as average in all areas. Student's engineering elective teacher, Chris Barron, also rated Student as average in all categories except social communication and social emotional reciprocity, which he rated as slightly elevated. At hearing, Barron explained he was worried that Student stuttered a bit, slurred some words, and sometimes had trouble enunciating words, although that did not impact his class participation and Barron never noticed peers giving Student a hard time. Barron also worried that Student seemed bitter once about being called out of class for speech services, although Barron told Student not to worry about it.

Student's teachers noted no concerns in rating scales of his behavior, executive functioning, and adaptive skills. Teacher responses suggested Student demonstrated well-developed adaptive skills across various life areas. Mother did not return any rating scales sent to her by Salazar.

McClintock administered a transition skills inventory to Student to assess Student's current skills and needs for transition planning to prepare Student for life after high school. Student wanted to go to college and live independently. He recognized that he needed to learn how to find housing options, track spending, create a budget, and wake up on his own, among other transition needs. The transition skills inventory results indicated Student's transition goals should focus on college awareness, career awareness, and budgeting.

In the psychoeducational assessment report, dated November 4, 2024, Salazar concluded there was a sufficient discrepancy between Student's ability and his achievement score in reading comprehension, and recommended Student be found

eligible for special education in the category of specific learning disability. Salazar did not find Student eligible under the category of autism because Student did not exhibit characteristics of autism that adversely affected his education.

Speech-language pathologists Kristine Nichols and Kimberly Reid assessed Student's speech and language skills. Student told the assessors he stuttered when he was excited or trying to explain something. Math teacher Castro reported Student's explanations often went around in circles, and Student struggled to get to the point. The physical science teacher reported Student could be difficult to understand at times, and the physical education teacher reported no concerns.

Speech-language pathologist Nichols observed Student over several days in several different classrooms and between classes. Student was typical in his presentation and participation, and interacted appropriately with peers. On an examination of Student's oral mechanism, Student had some abnormally positioned mouth structures and some difficulty moving his tongue in certain positions. Nichols noted those might cause distortion when Student produced sounds and affect the quality of his voice.

On tests of articulation, Student distorted some sounds and made sound substitutions. He also misarticulated sounds at the sentence and conversational level by blending the final and initial sounds of two words together to form a single word. He sometimes dropped consonants at the end and beginning of two words. Student also emphasized and over-articulated r-sounds. He pronounced r-sounds correctly, but his emphasis drew adverse attention. On articulation rating scales, two teachers had responded showing no educational impact, but assessor Nichols herself rated Student's intelligibility at 85 percent overall.

On several measures of fluency, Student was mildly disfluent. This consisted mostly of sound prolongations, for example, "Sssssam" instead of "Sam." On a stuttering measure, Student scored in the very mild range. On self-rating scales, Student measured his stuttering from mild to moderate in its effect on his quality of life, to moderate to severe in general. Nichols and math teacher Castro rated Student's mild stutter as having no educational impact.

On measures of language ability, Student scored in the average range in all categories, including pragmatic language, sometimes called social language, skills.

Nichols found that Student qualified for special education under the eligibility category of speech or language impairment because his articulation and fluency disorders had an adverse impact on Student's educational performance. At hearing, Nichols opined that Student's articulation and fluency errors could manifest in Student as concerns about the reactions of others, avoiding speaking, changing words, and difficulty getting his point across. These reactions, although not obvious, would affect his classroom participation and could be the cause of Student's difficulty making himself clear. Nichols recommended continuing speech services.

Occupational therapist Maya Kirpalani assessed Student to determine if he needed physical therapy to access the school environment. Student told her he had no concerns. Student had a doctor's letter on file that he could take additional time in physical education and should not be forced to run. Kirpalani spoke to Student after Student walked the track three times, and Student said he always had a very low level pain with walking, but it didn't bother him. Kirpalani and the orthopedic impairment assessor together reached Mother by telephone, but Mother stated she was unavailable to speak with them and did not later return the call.

Kirpalani did not see Student exhibiting any physical difficulties during his school day in observations of him on campus, in class, or during testing. Kirpalani's physical therapy assessment report concluded Student had adequate range of motion, posture, balance, and functional mobility to access his educational environment, and did not recommend physical therapy.

Orthopedic impairment itinerant teacher Jeremiah Goco assessed Student to determine if Student needed orthopedic impairment-related support and accommodations to access, and make appropriate progress in, the educational curriculum. Goco observed Student in his physical education, math, and engineering classes, and Student was able to complete all class tasks independently. Neither Student nor his teachers expressed concerns. Goco's assessment report concluded Student was not eligible for special education under the category of orthopedic impairment, and Student did not need orthopedic impairment services.

Assessors Salazar, McClintock, Nichols, and Goco testified at hearing. Each assessor was well-qualified in their field of expertise and familiar with Student's disabilities. Each was professional in demeanor, recalled their observations and interactions with Student well, and answered questions thoroughly and thoughtfully. They testified credibly about the results of Student's testing and rating scales, and their opinions regarding Student's abilities, educational needs, and the services and programs to address those needs were given significant weight.

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LAW ON PARENTAL PARTICIPATION IN IEP TEAM MEETINGS

School districts must afford parents an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b), Ed. Code, § 56342.5.) The IDEA and California special education law make parents mandatory members of the IEP team, (34 C.F.R. § 300.321 (a)(1); Ed. Code, § 56341.5, subd. (a)), and require districts to ensure the parent is a member of any group that makes decisions on the educational placement of the child. (34 C.F.R. §§ 300.501 (c)(1), 300.327.)

If neither parent can participate in an IEP team meeting, the district must use other methods to ensure the parents' participation, including individual or conference telephone calls, or video conferencing. (34 C.F.R. § 300.501 (c)(2); Ed. Code, § 56341.5, subd. (g)). If the district is unable to obtain the parents' participation, it must have a record of its attempts to ensure their involvement. (34 C.F.R. § 300.501 (c)(3), Ed. Code, § 56341.5, subd. (h); *Drobnicki v. Poway Unified School Dist.* (9th Cir. 2009) 358 F.App'x 788, 789 (nonpub. opn.)(*Drobnicki*), [citing *Shapiro ex rel. Shapiro v. Paradise Valley Unified School Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078, superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B)].) Districts should only use alternative meeting procedures when parent participation is not otherwise available. (*Drobnicki, supra*, at 790.)

Notice of an IEP team meeting is a critical element of the parent's ability to participate meaningfully in the IEP process. The IDEA requires that the district provide notice to parents early enough to ensure that parents have an opportunity to attend the meeting. (34 C.F.R. § 300.322 (a)(1); Ed. Code, § 56341.5, subd. (b).)

A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evid. Code, § 641.)

The U.S. Department of Education, Office of Special Education Programs, called OSEP, has provided guidance to districts when the parents request an IEP team meeting be held outside of school hours:

Although [the IDEA] does not prohibit public agencies from scheduling IEP team meetings in the evening, it does not require that they do so. Therefore, it is not unreasonable for public agencies to schedule meetings of the IEP [t]eam only during regular school hours or regular business hours because it is likely that these times are most suitable for public agency personnel to attend these meetings

[T]here may be circumstances where a parent cannot attend an IEP [t]eam meeting that is scheduled during the day because their employment situation restricts their availability during school hours or business hours.... Where public agencies and parents cannot schedule meetings to accommodate their respective scheduling needs, public agencies must take other steps to ensure parent participation, consistent with 34 CFR § 300.322(c). These include individual or conference telephone calls or videoconferencing, consistent with 34 CFR § 300.328 (related to alternative means of meeting participation).

(Letter to Thomas (OSEP Jun. 3, 2008) p. 2, 51 IDELR 224.)

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The IDEA requires that IEP team meeting notices to the parents:

- State the purpose, time, and location of the meeting, and who will be in attendance, and
- Inform the parents of their right to invite individuals who have knowledge or special expertise about the student.

(34 C.F.R. § 300.322(b)(1).)

The notice does not have to identify the district's meeting attendees by name, so long as the notice identifies those individuals by position. (See *Letter to Anonymous* (OSEP Mar. 31, 2008) 50 IDELR 259.)

A school district can conduct an IEP team meeting without a parent in attendance when the district is unable to convince the parents that they should attend. (34 C.F.R. § 300.322(d).)

KERN'S ATTEMPTS TO SCHEDULE AN IEP TEAM MEETING

Kern began attempts in August 2024 to schedule an IEP for a 30-day review of how Student was doing in high school, and to make updates to Student's IEP as determined by the IEP team. Student's annual review of his IEP was due November 6, 2024.

Rudy Cabrera was Student's case manager and on August 20, 2024, sent Parents notice of an IEP team meeting scheduled for September 10, 2024, at 8:30 a.m. Cabrera mailed the notice to Mother. He emailed the notice to Father, as Father had not provided Kern with a current mailing address.

Each IEP team meeting notice sent by Cabrera to Parents stated the purpose, date and time of the meeting, and that the meeting would take place at Student's school, Liberty High School. Each notice also gave the positions of the team members who would be in attendance, and stated Student was invited and encouraged to participate in the meeting to discuss his goals for adult life and develop a plan towards attainment of those goals. Each notice informed Parents of their right to invite individuals who had knowledge of, or special expertise about, Student. Many notices included one, two, or three proposed alternate dates and times Parents could elect if the first date was inconvenient for them. All notices provided Cabrera's name and telephone number as the person to contact for scheduling.

In a conversation with the school principal three days later on August 23, 2024, Mother said she wasn't sure if she could attend the IEP team meeting on September 10, 2024. Parent did not later contact Kern staff to confirm attendance or request alternate dates.

On September 3, 2024, in another conversation with the school principal, Mother told Kern to send any paperwork to her by certified mail, with copies for pick-up at the school's front desk. Mother also questioned why a 30-day review IEP team meeting was necessary and requested the meetings be held on a Saturday.

On September 9, 2024, Mother called the school principal and said she would not be at the September 10, 2024 IEP team meeting. She again requested that IEP team meetings be scheduled on Saturdays.

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On September 13, 2024, the assistant principal for special education, Kristina Treadwell, sent Mother a letter explaining why a 30-day review was necessary, and informing her IEP team meetings could only be held during school hours when necessary IEP team members were available. The notice proposed three new dates in September and October 2024. The letter was sent by U.S. mail, certified mail, and email.

Each letter sent by Treadwell met the requirements of an IEP team meeting notice. It stated the purpose, dates and time, and location of the meeting. It identified the positions of the persons who would be in attendance and informed Parent of her right to invite individuals who have knowledge or special expertise about Student.

Each letter also met the requirements of a prior written notice. A district must give parents prior written notice when the district proposes to initiate or change, or refuses to initiate or change, the identification, assessment, educational placement, or the provision of the FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503; Ed. Code, § 56500.4.) Treadwell began using a prior written notice format on September 13, 2024, because Kern was refusing Mother's requests for Saturday IEP team meetings, and was explaining why a 30-day IEP team meeting was requested.

Treadwell's prior written notice letters described and explained the actions Kern proposed or refused, the information Kern relied upon in making its decision, other information relevant to the decision, and provided Parents with a notice of procedural safeguards and resources for understanding those rights. Treadwell also offered to have the IEP team meeting serve as Student's annual IEP review.

On September 16, 2024, Mother emailed the school principal that if IEP team meetings were during the week, she requested they be at 5:00 p.m. The next day, Mother called the principal and told him she preferred Mondays and Tuesdays.

On September 18, 2024, Cabrera mailed to Mother five proposed dates, and times during the school day, for an IEP team meeting in September or October 2024. Cabrera emailed Father proposing the same dates and times, attaching copies of the meeting notice and procedural safeguards, and offered that Father could participate in person, by videoconference, by telephone, or by designating a representative for the meeting. Cabrera also mailed the meeting notice to Father.

On September 19, 2024, Mother called and spoke to Treadwell, and asked that all correspondence be mailed or made available for pick up, and requested Kern stop emailing her. She told Treadwell that Father's work schedule only allowed for IEP team meetings on Mondays and Tuesdays after 5:00 p.m., or on Saturdays. Mother also called Cabrera and told him to stop emailing Father, as she would schedule the IEP team meetings on his behalf.

On September 20, 2024, Treadwell sent Mother by U.S. mail and certified mail a prior written notice letter and notice of IEP team meeting offering October 8, or alternatively October 14, 2024, at 1:30 p.m. as IEP team meeting dates and times. To accommodate Father's schedule, Treadwell offered to set the IEP team meetings at any time between 8:00 a.m. and 4:00 p.m. On October 8, 2024, Mother emailed Cabrera that she would not attend the IEP team meeting scheduled for 1:30 p.m. that day.

On October 9, 2024, Mother emailed Cabrera to ask who would be attending the IEP team meeting, and Cabrera emailed the information to Mother. That same day, Treadwell sent Mother a prior written notice letter explaining again that IEP team meetings could only be held during school hours. Treadwell offered four dates and

times in November, including Monday, November 4, at 9:30 a.m., Tuesday, November 5, at 8:40 a.m., Tuesday, November 5, at 1:30 p.m., and another date. The notice also offered to have Father join by telephone or videoconference.

Kern's assessments were scheduled to be completed by November 2024, and from October 9, 2024, forward, Cabrera and Treadwell noticed the IEP team meetings as combined 30-day, annual, and triennial IEP team meetings. This was in keeping with the IDEA's guidance that, to the extent possible, school districts should encourage consolidation of the three-year assessment reevaluation meeting with other IEP team meetings for the child. (20 U.S.C. § 1414(d)(3)(E); 34 C.F.R. § 300.324(a)(5).)

On October 30, 2024, Cabrera emailed Parents about the upcoming four proposed meeting dates and times. He called Father and left a voicemail about the proposed IEP team meeting dates and times.

On October 31, 2024, Father emailed to Cabrera that he worked 70 to 80 hours per week and could only attend IEP team meetings after 6:00 p.m. or on Saturdays. Father stated that Mother was the educational decision maker for Student and instructed Cabrera to communicate only with Mother for future scheduling. Kern properly addressed all further correspondence on scheduling Student's IEP team meeting to Mother.

Because neither parent confirmed dates or requested alternative dates, Student's IEP team assembled on November 4, 2024, at the scheduled time, and again on November 5, 2024, at 8:30 a.m. as offered for that day. For both meetings, Cabrera emailed Parents the videoconference link the day before the meeting, and at

the meeting called Parents to ask if they would attend. Parents did not pick up the phone, and each time Cabrera left a voicemail message that the IEP team would not proceed without at least one parent present.

Later on November 5, 2024, Cabrera reached Mother around 11:00 a.m. by telephone, and Mother complained about Kern for almost an hour. Cabrera asked Mother if he could call her back at 1:30 p.m. when the team was assembling again, or at 1:30 p.m. on November 6, 2025, but Mother said she was only available after 5:00 p.m. or on Saturdays.

On November 12, 2024, Treadwell sent another prior written notice to Mother by U.S. mail and certified mail, offering three dates and times in December 2024. Alternatively, Treadwell offered to schedule a meeting during Father's lunch break, or to schedule a meeting on dates requested by Parents. Treadwell offered to provide a note for Father's employer requesting time off to attend the IEP team meeting. She reminded Mother that only one parent needed to attend the meeting. Neither parent responded to confirm an IEP team meeting date.

From November 12, 2024, forward, all certified mail receipts were returned as unsigned by Mother.

On December 5, 2024, Mother emailed Cabrera to request draft assessment reports. Cabrera sent Parents drafts of the assessment reports on December 9, 2024, by U.S. mail and certified mail.

On December 12, 2024, Treadwell sent another prior written notice to Mother offering three dates and times in January, including January 23, 2025, at 8:30 a.m., and January 23, 2025, at 1:30 p.m.

On January 16, 2025, Cabrera sent Parents an email offering additional dates in February 2025, because certified mail was being returned. He received an automatic response from Mother's email saying she was on vacation and would not check email until mid-February 2025. The automatic response also contained a message for Kern that it should only contact her by mail.

Neither parent responded to the December 12, 2024, prior written notice or Cabrera's January 16, 2025 email, and Student's IEP team assembled twice on January 23 at the times offered. Cabrera had emailed videoconference links to Parents, and attempted to reach Parents by telephone from the meetings. He left voicemail messages requesting their participation and stating the team would not proceed without at least one parent present.

On January 23, 2025, Cabrera prepared and sent by mail to Mother a notice of IEP team meeting on February 20, 2025, at 1:30 p.m., with alternate dates and times offered for February 25, 2025, at 10:45 a.m. or 1:30 p.m.

On January 28, 2025, Treadwell sent Mother by U.S. mail and certified mail a prior written notice letter reiterating the dates offered in the notice sent by Cabrera, and confirming that Kern wanted to work with Parents to ensure their participation in the IEP process.

Neither parent responded to the January 28, 2025 prior written notice. Student's IEP team assembled on February 20, 2025, and on February 25, 2025, at both times offered. Cabrera had emailed videoconference links to Parents the days before and attempted to reach them by telephone from all three meetings. He left voicemail messages requesting their participation and stating the team would not proceed without at least one parent present.

On February 26, 2025, Treadwell sent Mother a prior written notice letter by U.S. mail and certified mail asking her to propose dates and times from March 10, through March 21, 2025, during school hours, for the IEP team meeting.

Treadwell did not receive a response from Mother to the February 26, 2025 letter, and emailed Mother on March 3, 2025, to reiterate that Kern was offering to hold the IEP team meetings on any school day during school hours between March 10 and March 21, 2025.

On March 7, 2025, Mother emailed Treadwell and instructed Kern not to email her, and to send all correspondence by mail.

On March 16, 2025, by school newsletter, Parents of Liberty High students were informed that Friday, March 21, 2025, would be an "early out" day and school would close at 2:00 p.m. On March 19, 2025, Mother emailed Treadwell to request an IEP team meeting be held on March 21, 2025 from 3:30 to 4:00 p.m.

On March 21, 2025, Treadwell sent Parents a prior written notice that March 21, 2025, was an early out day, and IEP team meetings on early out days would have to start early enough to finish by 2:00 p.m. Treadwell offered to schedule a meeting at Parents' convenience on any day between April 21, and May 2, 2025, during school hours.

Treadwell did not hear from Parents and on March 26, 2025, sent a prior written notice letter that if the Parents did not propose dates, the IEP team would convene and begin drafting an update IEP on May 2, 2025, from 8:30 to 11:30 a.m.

Student's IEP team assembled on May 2, 2025, at 8:30 a.m. Cabrera emailed Parents videoconference links for the May 2, 2025 IEP team meeting the day before and attempted to reach each parent by telephone from the meeting. He left voicemail

messages requesting their participation and stating the team would proceed in the absence of a parent if neither parent joined the meeting or contacted Cabrera. Neither parent joined the meeting or contacted Cabrera about alternate dates.

Kern afforded Parents every opportunity to participate in IEP team meetings with respect to the identification, evaluation, and educational placement of Student, and the provision of FAPE to Student. Kern made exhaustive attempts to ensure at least one parent was a member of the group making decisions on Student's educational placement.

An abundance of evidence established that IEP team meeting notices and prior written notice letters were sent to Mother, by regular and certified U.S. mail. Each notice and letter was correctly addressed and properly mailed, and is presumed to have reached Mother in the ordinary course of delivery. Mother's refusal to accept or pick up certified mail is insufficient to overcome the presumption that she received notices and letters properly addressed and mailed.

Kern used other methods to ensure Parents' participation, including individual or conference telephone calls, and videoconferencing. Kern offered to write a letter for Father's employer and to schedule a meeting for Father's lunch time to ensure Father's participation. Kern kept a meticulous record of its attempts to obtain Parents' involvement in the IEP team meetings, including contact logs, documents, and mail and courier receipts. The circumstances of each were credibly testified to by Cabrera and Treadwell. Multiple witnesses testified to assembling as an IEP team multiple times, with Cabrera attempting to contact Parents by telephone from each meeting.

Kern provided notice to Parents early enough to ensure they had an opportunity to attend each meeting. Kern was not required to hold IEP team meetings after school hours or on Saturdays, and reasonably declined to do so. Kern took into consideration Father's employment situation, which restricted his ability to attend meetings at Liberty High during school hours, and offered to schedule the meeting during Father's lunch hour, and to allow either or both to attend the meeting by telephone or videoconference. Kern met its obligation to accommodate Parents' scheduling needs.

Kern was unable to convince Parents that they should attend any of the IEP team meeting dates and times offered, and were entitled to conduct the May 2, 2025 IEP team meeting without a parent in attendance.

LAW ON MANDATORY IEP TEAM MEMBERS

The IEP team for each student with a disability generally must include:

- the parents of the child,
- not less than one general education teacher of the child, if the child is or may be participating in the general education setting,
- not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child,

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- a district representative who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities. The district representative must also be knowledgeable about the general education curriculum and knowledgeable about the availability of district resources,
- an individual who can interpret the instructional implications of evaluation results,
- other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate, and
- whenever appropriate, the child with the disability.

(34 C.F.R. § 300.321 (a).) In addition, a student must be invited to participate in an IEP meeting if one of the purposes is to discuss postsecondary transition goals and services.

(34 C.F.R. § 300.321 (b)(1).)

MANDATORY IEP TEAM MEMBERS, EXCEPT PARENTS AND STUDENT, WERE PRESENT AT THE MAY 2, 2025 IEP TEAM MEETING

Chris Barron, Student's general education engineering teacher, attended the May 2, 2025 IEP team meeting. Barron taught Student for both semesters of the 2024-2025 school year, and was very familiar with Student's classroom participation and homework production.

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Special education teachers Cabrera and Treadwell attended the May 2, 2025 IEP team meeting. Cabrera had a master's degree in special education, and a special education credential to teach students with mild to moderate disabilities. Treadwell also had a master's degree in special education, and was credentialed to teach students with mild to moderate and moderate to severe disabilities. Cabrera was Student's case manager and had communicated with Student's general education teachers to prepare for the IEP team meeting. Neither Cabrera nor Treadwell provided direct services to Student, because Student was placed in general education and the only related service in his November 6, 2020 IEP was speech therapy. However, speech-language pathologists Reid and Nichols, who both provided speech therapy to Student and had assessed Student's speech and language, were also present.

Administrators Josh Williams, assistant principal of instruction at Liberty High, and Treadwell, assistant principal for special education for Kern, attended the May 2, 2025 IEP team meeting. Both were qualified to provide or supervise the provision of specially designed instruction to meet Student's unique needs, knowledgeable about the general education curriculum, and knowledgeable about the availability of district resources.

All of Student's assessors were present at the May 2, 2025 IEP team meeting to interpret the instructional implications of the assessments completed on Student. Salazar was present to explain the results of the psychoeducational assessment, and a school counselor was also present to provide input. Reid and Nichols were present to explain the results of the speech and language assessment. Kirpalani attended to

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present the physical therapy assessment, and Goco attended to present the orthopedic impairment assessment. All four assessors were highly qualified to explain to other IEP team members how their assessments identified, or did not identify, educational needs for Student in their areas of expertise.

The school nurse was also present to inform the May 2, 2025 IEP team about Student's medical history and related school needs.

In summary, other than Parents and Student, all other mandatory IEP team members were present on May 2, 2025.

THE IEP TEAM CONSIDERED PRESENT LEVELS OF ACADEMIC ACHEIVEMENT AND FUNCTIONAL PERFORMANCE

When developing a student's IEP, the IEP team must consider the following:

- strengths of the Student,
- the concerns of the parents for enhancing the education of the student,
- the results of the most recent assessment of the student, and
- the academic, developmental, and functional needs of the child.

(Ed. Code, § 56341.1, subd. (a).)

The May 2, 2025 IEP team considered Student's strengths. On his first semester report card, Student earned three As, one B, and two Cs. Student's Spanish teacher, English teacher, science teacher, and algebra teacher Castro, all reported that Student was earning good grades and was properly placed in college preparatory classes. Student had

friends in his classes and was active in Liberty High's ninth grade homecoming activities. Castro wanted Student to increase his homework completion, but agreed with the other teachers that Student was on par with other successful students.

Parents had not communicated with school staff about their concerns for discussion at the IEP team meeting, and had not returned questionnaires and rating scales provided by the assessors. However, school psychologist Salazar relayed to the team that Mother told the school principal that she was concerned with Student's speech, mobility, and autistic-like characteristics.

The assessors reported on Kern's recent assessments of Student. School psychologist Salazar reported on Student's psychoeducational evaluation. She explained that Student's cognitive ability was high average. Although his academic performance was in the average range in most areas, he had low scores in reading and passage comprehension. Salazar told the team that the discrepancy between Student's ability and academic achievement due to a relative weakness in verbal processing made him eligible for special education under the category of specific learning disability. (See Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Behaviorally, Salazar reported that observations, teacher responses, and Student's self-report indicated Student was social, engaged in appropriate communications with adults and peers, and showed no significant behavioral, emotional, social, or school-related concerns. Similarly, on autism scales, teachers had rated Student average in all areas, with minor concerns for social communication and social emotional reciprocity stemming from Student's articulation and fluency errors and his dislike of speech

therapy. Salazar told the team that Student did not exhibit communication or social impairments adversely affecting educational performance, or characteristics commonly associated with autism, like repetitive activities, stereotypical movements, resistance to change, or unusual responses to sensory experiences. (See Cal. Code regs., tit. 5, § 3030, subd. (b)(1).) She concluded that Student was not eligible for special education under the category of autism.

In the area of transition, Salazar told the IEP team Student's desire to go to college and live on his own indicated they should focus on Student's college awareness, career awareness, and post-high school independent living skills.

Speech-language pathologists Kristine Nichols and Kimberly Reid reported on Student's speech and language assessment. Student presented as a typical ninth-grader during observations and in teacher reports, but had some articulation errors and a mild stutter that interfered with his intelligibility, particularly when Student was speaking quickly. Student was reported to sometimes have difficulty getting to the point, but he generally interacted appropriately and well with peers. He scored in the average range in pragmatic language skills.

Nichols found Student qualified for special education eligibility under the category of speech or language impairment because his articulation and fluency disorders had an adverse impact on educational performance. (See Cal. Code Regs., tit. 5, § 3030, subds. (b)(11)(A) and (C).)

Occupational therapist Maya Kirpalani reviewed her assessment and relayed to the team that Student demonstrated no gross motor concerns in accessing the school environment, beyond his doctor's caution that Student have additional time to traverse

the campus and not be forced to run in physical education. Orthopedic impairment itinerant teacher Jeremiah Goco reviewed his assessment of Student and concluded that Student did not need services to address orthopedic impairment.

After reviewing Student's strengths, Parent's concerns, and the results of Student's most recent assessments, the May 2, 2025 IEP team identified Student's academic, developmental, and functional needs. The IEP team found Student eligible for special education under the category of specific learning disability due to the discrepancy between his ability and overall academic performance. Team members discussed that Student had good academic skills but would benefit from supports and services to lessen the impact of the relative weakness of verbal processing on his expression.

The May 2, 2025 IEP team also discussed the impacts on Student's education from dysfluency and self-perception. They also found him eligible for special education under the category of speech or language impairment, with needs in speech production.

The May 2, 2025 IEP team considered Student's academic, developmental, and functional needs, and identified needs in communication, transition and academics.

KERN DEVELOPED APPROPRIATE ANNUAL GOALS

An annual IEP must contain a statement of measurable annual goals related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum and meeting each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(1), (2); Ed. Code, § 56345, subd. (a)(1), (2).) The IEP must also contain

a statement of how the goals will be measured. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs, tit. 5, § 3040, subd. (c).)

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler* (OSEP Mar. 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 Regulations).)

Based upon recent assessments and input from Kern teachers and staff, the May 2, 2025 IEP team determined that Student had ongoing needs in communication, transition, and academics.

The May 2, 2025 IEP team developed two annual goals in communication. Student had difficulty with multisyllabic words and needed to slow down when speaking. The first communication goal was for Student to be aware when a listener was confused and be able to self-correct. Speech-language pathologist Buchanan had worked with Student at the end of October 2024 and drafted the goal to address Student's decreased intelligibility at the conversational level. The first step in addressing listener confusion was teaching Student to be aware of his audience so he could adapt his pace of speaking.

The second communication goal required Student to identify and use intelligibility strategies such as slowing down, over-articulated speech, pauses, and rewording. Buchanan explained at hearing that Student had difficulty with motor planning during multisyllabic words and opined persuasively that Student could

increase his intelligibility with learned strategies to break down syllables and to slow down to avoid dropped word endings. Buchannon opined that teaching tools such as having Student dictate and play back sentences, or having him use voice-to-text programs, could highlight enunciation errors as well as improve his intelligibility by using pacing and enunciation strategies.

The speech-language pathologist and general education teachers would be responsible for working with Student on the goals, and each goal identified progress and accuracy measures they would collect and report.

The May 2, 2025 IEP team developed an annual goal in academics. The team wanted to improve Student's reading comprehension to support his ability to interpret information, which was an essential skill for both academic success and future workplace tasks that relied upon written instructions or reports. The proposed annual academic reading goal required Student, when given core curriculum materials, to cite strong and thorough textual evidence to support an analysis and to draw correct inferences. Student's special education teacher would be responsible for working on the reading goal with Student and measuring and reporting progress.

The May 2, 2025 IEP team developed three transition goals for Student in college awareness, career awareness, and independent living. The transition education goal was for Student to develop a timeline of courses he needed to take for graduation with a diploma within four years, and which would meet the requirements of entrance into a four-year university. The transition employment goal was for Student, with special education teacher support, to familiarize himself with his IEP accommodations and draft

a letter to his classroom teacher to help ensure success in the classroom. This goal sought to build Student's self-advocacy skills to support his long-term success in school and throughout adulthood.

The self-care independent living goal supported Student's plan to go to college and live independently. It called for Student to demonstrate managing a monthly budget, navigating local transportation, and organizing a system to manage bills and appointments with 80 percent accuracy across three trials as measured by observation and teacher-created checklists. Student's special education teacher would be responsible for working on the transition goals with Student and measuring progress.

The credible and persuasive testimony of the May 2, 2025 IEP team members, including Salazar, McClintock, Cabreara, Treadwell, Nichols, and Buchanan, demonstrated that Kern drafted appropriate goals based upon Student's present levels of academic achievement and functional performance. The credible and persuasive testimony of Kirpalani and Goco established that Student did not have physical therapy or orthopedic impairment needs that required annual goals, as his minor physical limitations could be accommodated with extra time and physical education restrictions.

The goals adopted by the May 2, 2025 IEP team were measurable and Student could be expected to meet or make appropriate progress towards each goal within a year's time. Each goal had a direct relationship to Student's present levels of performance and educational needs.

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The collective opinions of these credible and well-qualified professionals, supported by comprehensive assessments of Student, observations, and reports from Student's teachers, established that Kern developed appropriate, measurable annual goals to address Student's educational needs in the May 2, 2025 IEP.

KERN DEVELOPED APPROPRIATE ACCOMMODATIONS

An IEP must include a statement of supplementary aids and services and other supports that are provided in education-related settings to enable the student to be educated with nondisabled children to the maximum extent appropriate. (20 U.S.C. § 1401(33); 34 C.F.R. § 300.42; Ed. Code, § 56033.5.) Accommodations and modifications necessary for the student to receive a FAPE must also be included in the IEP. (Ed. Code, § 56341.1, subd. (c).)

The May 2, 2025 IEP team determined that Student did not require supplementary supports and services beyond accommodations. Student was able to access grade level material and did not need modification of the curriculum. To help Student achieve his goals and succeed in the general education classroom, the IEP team offered Student accommodations in six categories:

- setting and scheduling,
- teacher directions,
- student response,
- sensory needs,
- organization and study skills, and
- personal care.

Setting accommodations included sitting near instruction, extended time to complete assignments, and teacher reminders regarding due dates. Teacher directions included increased verbal response time, encouragement of slow smooth speech, modeling correct pronunciation, on-task reminders, and ignoring minor inappropriate behaviors. Student was given the option to conduct oral presentations one-to-one with the teacher, and to access text-to-speech programs as needed.

Sensory accommodations included breaks as needed, and the use of alternative seating arrangement as preferred by Student to increase on-task attention. This was in response to teacher reports that sometimes Student liked to stand during class. With regard to organization, Student would receive a graphic organizer for due dates and would check in with a trusted staff member on a biweekly basis. Student would also receive time to complete assignments during the school day, such as a dedicated study hall period. Student's personal care needs were accommodated with the ability to self-limit and self-pace during physical education.

Salazar, McClintock, Cabrera, and Treadwell explained at hearing that the setting, organization, teacher, and student accommodations provided support for Student's need for additional time and assistance to process assignments due to his specific learning disability in reading comprehension. Those accommodations also provided Student with alternative means of demonstrating mastery without reliance on verbal presentations. Student enjoyed speaking and presenting in class, but his speech impairments in articulation and fluency could impact both. The accommodations Kern offered gave Student the option to complete assignments in writing or to present to the teacher individually.

Kirpalani and Goco testified credibly that Student's slight walking impairments did not adversely affect his access to the campus, so long as he was given adequate time to comfortably walk distances and could limit exertion in physical education as needed. The sensory accommodation allowing Student to stand in class and to take breaks as needed accommodated Student's physical needs as well as attention to task.

The May 2, 2025 IEP team developed the accommodations on their review of recent assessments, teacher reports, and related service provider reports. The evidence demonstrated that Kern developed appropriate accommodations.

THE IEP TEAM DISCUSSED APPROPRIATE PLACEMENT

The IDEA expresses a clear policy preference for inclusion in general education to the maximum extent appropriate as an aspiration for all children with special needs. (See 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code, § 56031.) Educational agencies are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56031.)

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In light of this preference for the least restrictive environment, the United States Court of Appeals for the Ninth Circuit has adopted a balancing test that requires the consideration of four factors to determine whether a child can be placed in a general education setting:

1. the educational benefits of placement full time in a regular class;
2. the non-academic benefits of such placement;
3. the effect the student would have on the teacher and children in the regular class; and
4. the costs of mainstreaming the student. (*Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1948-1050 (*Daniel R.R.*)].)

The continuum of the program options includes, but is not limited to, from least restrictive to most restrictive:

- regular education,
- resource specialist programs,
- designated instruction and services, like occupational therapy,
- special classes,
- nonpublic, nonsectarian schools,
- state special schools,
- specially designed instruction in settings other than classrooms,

- itinerant instruction in classrooms, resource rooms, or settings other than classrooms, and
- instruction using telecommunication, and instruction in the home, in hospitals, or in other institutions. (Ed. Code, § 56361.)

In determining the educational placement of a child with a disability, an educational agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, who consider the requirement that children be educated in the least restrictive environment. (34 C.F.R. § 300.116.) In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs, and the child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (*Ibid.*)

California defines a special education placement as that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to a child with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

The May 2, 2025 IEP team discussed Student's placement in the least restrictive environment. All team members agreed that Student could be placed in general education, particularly in light of Student's teachers opining Student was correctly placed in college preparatory classes. However, general education teacher Barron told the team Student's homework production had slowed over the second semester, and

team members wanted Student to have adequate support for his academic goal. Many team members were concerned that Student had started to refuse to attend his speech therapy sessions because he did not want to miss classes. Student had indicated to several team members that he had a negative view of special education.

Administrators Cabrera and Treadwell discussed a general education elective course that provided academic support for classroom assignments. That class, called the academic performance class, focused on work completion and executive functioning skills which would address homework completion as well as provide academic support.

However, the May 2, 2025 IEP team determined that the teacher report information they had from October 2024 was dated and they wanted current reports from Student's second semester teachers. The IEP team agreed to adjourn and reconvene to complete the IEP.

THE MAY 21, 2025 IEP MET PROCEDURAL AND SUBSTANTIVE REQUIREMENTS

On May 14, 2025, Treadwell sent Mother by U.S. mail and certified mail a prior written notice that Student's IEP team had convened to review assessments, and that the IEP team would meet again on May 21, 2025, from 11:15 a.m. to 1:15 p.m. to complete the IEP. Treadwell encouraged Mother to attend, or to contact her with alternate dates. Mother did not respond to the May 14, 2025, letter.

Student's IEP team assembled on May 21, 2025, at 11:15 a.m. Cabrera had emailed videoconference links for the May 21, 2025 IEP team meeting to Parents the day before and attempted to reach Parents by telephone from the meeting. He left

voicemail messages requesting their participation and stating the team would proceed without a parent if neither joined the meeting or contacted him to schedule a different date. Neither parent joined the meeting or contacted Cabrera about alternate dates.

ALL MANDATORY IEP TEAM MEMBERS WERE PRESENT

The same IEP team members from the May 2, 2025 IEP team meeting assembled on May 21, 2025. Liberty High principal Williams appeared as an administrator knowledgeable about Kern's resources and programs. Cabrera and Treadwell attended as special education teachers, and Barron attended as a general education teacher. Assessors Salazar, Nichols, Kirpalani, and Goco attended, as did speech-language pathologists Reid and another speech pathologist assigned as Student's case manager. The school nurse and school counselor were also present.

Parents did not attend the May 21, 2025 IEP team meeting despite Kern's continued attempts to ensure their participation. Student was invited through the notices and letters to Mother, and through Student's school email, but did not make himself available for the meeting. However, all other mandatory IEP team members were present on May 21, 2025.

After further discussion detailed below, the May 21, 2025 IEP team adopted the needs identification, eligibility determinations, annual goals, and accommodations developed at the May 2, 2025 IEP team meeting. The May 21, 2025 IEP embodied Kern's offer of FAPE to Student.

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ADDITIONAL GOAL WAS APPROPRIATE

In addition to the speech, academic, and transition goals adopted from the May 2, 2025 IEP team meeting, the May 21, 2025 IEP team offered an additional academic goal. Newly obtained teacher reports from the second semester of the 2024-2025 school year varied widely. Student's Spanish teacher said Student was often off-task and distracting to others, requiring frequent redirection. Student's weightlifting elective teacher and physical education teacher reported that Student worked hard in class and was easily redirected if too talkative. Student's English teacher reported Student was doing well, was on-task, and completed work in a timely manner. The algebra teacher reported that Student was well behaved and participated in class but was earning a D grade due to missing homework. The science teacher reported Student had slacked off in work production and distracted his peers by being too social. Barron, Student's general education engineering teacher, had seen a similar drop off with homework.

The May 21, 2025 IEP team decided that Student had an academic need to improve homework completion. The May 21, 2025 IEP team developed an additional annual academic goal in study skills to teach Student to better initiate tasks, sustain motivation, and complete assignments independently. The academic study skills goal was for Student to increase his task initiation and work completion skills by using a structured planning strategy of his choosing, such as a checklist, planner, or digital tools, to independently complete and turn in 80 percent of assignments in core academic classes. Student's special education teacher would be responsible for working on the academic goals with Student and measuring progress by teacher records.

This additional goal was measurable and Student could be expected to meet or make appropriate progress towards each goal within a year's time. It had a direct relationship to Student's present levels of performance and educational needs.

Multiple Kern witnesses opined that Student would benefit from the proposed academic study skills goal, particularly as missing homework was the primary driver of Student's lower grades in May 2025. Barron opined that any student would benefit from working on study skills, but improved study skills and homework completion were important to Student's success in college preparatory classes.

The evidence established that the goals offered in the May 21, 2025 IEP were appropriate to address Student's educational needs.

KERN OFFERED AN APPROPRIATE PLACEMENT

The May 2, 2025 team had discussed the continuum of placements but had not yet reached a final offer of FAPE. The May 21, 2025 IEP team weighed the four *Rachel H.* factors in determining whether to place Student in general education. First, the educational benefits of placing Student in general education included access to grade-level material, which all teachers reported Student was capable of when focused and motivated. Second, the non-academic benefits of a general education placement included opportunities to socialize with typical peers and avoid the unfavorable view Student had expressed about special education. Several of Kern's witness testified credibly that if a high school-aged student did not want to participate or succeed at something, they would not, or would participate half-heartedly and unsuccessfully.

As to the third *Rachel H.* factor, Student was sometimes a minor disruption to the class, but easily redirected. There was no evidence the fourth factor, cost, played a role in the IEP team's decision.

Student's IEP team wanted Student to succeed academically and identified the primary source of Student's difficulty with general education placement was his relative weakness in reading skills and lack of homework completion. The academic reading and study skills goals were designed to address this, and to avoid Student falling behind academically and experiencing frustration. Kern had an academic support class that was a general education intervention for students needing help with academics and organization. The IEP team members agreed that if Student was placed in general education with the general education academic support class as his elective providing daily intervention, Student could be successful in general education with minimal specialized academic instruction services, discussed below, that did not take him away from his classes.

Balancing the *Rachel H.* factors, Student would be appropriately placed in general education, the least restrictive environment on the continuum of placements. Student would be removed from special education for speech therapy sessions because he needed direct speech services with a speech-language pathologist to work on his communication goals for articulation and fluency. Removal for speech services would total only two percent of Student's school day, with 98 percent in general education.

The May 21, 2025 IEP placement offer was made by a group of persons knowledgeable about Student. The assessors explained the meaning of Kern's evaluation data to the IEP team, and the administrators explained the placement options. The IEP team considered the requirement that students be educated in the

least restrictive environment before deciding Student's placement. The May 21, 2025 IEP team considered any potential harmful effect on Student or on the quality of services that Student needed, and Student was not removed from education in age-appropriate regular classrooms due to modification of the curriculum.

Accordingly, the May 21, 2025 IEP offered Student appropriate placement in the least restrictive environment.

KERN OFFERED APPROPRIATE RELATED SERVICES

In considering a child's academic, developmental, and functional needs, an IEP must include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).)

The May 21, 2025 IEP team considered special education and related services to support Student's communication, academic, and transition goals, and individually designed to enable Student to make progress appropriate in light of his circumstances.

SPECIALIZED ACADEMIC INSTRUCTION

The May 21, 2025 IEP team discussed and adopted specialized academic support for Student. Thirty minutes per month of specialized academic instruction would be provided as consultation and collaboration to Student's teachers, particularly the teacher for Student's academic performance class. Student could work on transition goals, such as scheduling classes for graduation and budgeting with his academic performance class teacher, with the special education teacher assisting and monitoring

Student's progress. Consultation and collaboration with the academic performance teacher would allow reinforcement of executive functioning and homework completion strategies.

An additional 30 minutes per month of direct individualized specialized academic instruction would allow for instruction in the classroom as needed, or separate meetings with Student and the special education teacher to work on techniques and strategies for Student's study skills, reading, and transition goals. McClintock, Cabrera, and Treadwell opined persuasively that this amount of specialized academic services, on top of the supports already embedded in the academic performance class, would enable Student to make appropriate progress on his academic goals.

SPEECH SERVICES

Speech pathologist Nichols recommended, and the IEP team offered, that Student receive 160 minutes per month of direct individualized speech and language services. Nichols explained that this level of service was ambitious, but ensured that even if Student missed some sessions, he would be able to make significant progress on or meet his communication goals.

Although Student was in high school and disinclined to attend speech services, Nichols was hopeful Student would be motivated to attend speech therapy once he was working on the new updated goals Kern offered, and began seeing improvement in his articulation and fluency. Although Student showed no hesitation to speak in his classes, his assessment self-report indicated he recognized his speech errors impacted his quality of life. Speech pathologist Buchanan explained that speakers with speech impediments could begin choosing less nuanced words or hesitate to

express their opinions, particularly as they advanced in grade level with more difficult conversational concepts and vocabularies. Student's IEP team wanted to give Student greater confidence in his ability to communicate and ensure that he could communicate learned material through high school and adult life.

TRANSITION

Kern offered 15 minutes per month of transition services for each transition goal, for a total of 45 minutes per month. These included college awareness services, career awareness services, and other transition services available in the general education academic support class. In addition, as discussed above, a special education teacher would collaborate with the academic support classroom teacher and provide Student individualized support as needed, as well as monitor Student's progress on transition goals. In particular, the special education teacher would help Student with his transition employment goal of learning about and understanding his IEP accommodations to self-advocate with his teachers.

In conclusion, the May 21, 2025 IEP team considered Student's academic, developmental, and functional needs, and the IEP developed included a statement the special education and related services offered to meet those needs and allow Student to make progress on his annual goals.

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KERN OFFERED APPROPRIATE EMERGENCY CONDITIONS PROVISIONS

An IEP must provide a description of how the IEP will be provided under emergency conditions in which instruction or services, or both, cannot be provided to a student either at school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9)(A).) The description shall include all the following:

- Special education and related services.
- Supplemental aids and services.
- Transition services, as defined in Section 56345.1.
- Extended school year services pursuant to Section 300.106 of Title 34 of the Code of Federal Regulations.

Kern offered distance learning in the event of emergency conditions that included:

- Interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology,
- Video or audio instruction in which the primary mode of communication between the student and teachers was online interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology, and
- The use of print materials incorporating assignments that are the subject of written or oral feedback.

The May 21, 2025 IEP stated that in the event of a school closure due to an emergency condition lasting 10 days or longer, Student's education services would continue to be provided by distance learning in the three identified modes. Kern met the requirement of describing in the May 21, 2025 IEP how special education and related services would be provided under emergency conditions.

THE MAY 21, 2025 IEP OFFERED A SUBSTANTIVE FAPE

Over two IEP team meetings on May 2, and May 21, 2025, Student's IEP team complied with all procedural requirements in developing Student's IEP. Just as importantly, the IEP team considered Student's strengths and weaknesses, including his academic, developmental, and functional needs, and developed goals, accommodations, placement, and services to meet those needs. The placement was in the least restrictive environment, and a plan to provide services in the event of an extended school closure was developed.

The well-qualified and credible witnesses at hearing consistently testified that the IEP developed on May 2, and May 21, 2025 accurately identified Student's needs. They also consistently opined that the annual goals, accommodations, placement, and special education and related services offered in the May 21, 2025 IEP appropriately met those needs, as discussed individually above.

The May 21, 2025 IEP met the *Endrew* standard by providing Student access to specialized instruction and related services individually designed to provide educational benefit through an IEP reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

Accordingly, Kern met the burden of proving by a preponderance of the evidence that the IEP developed on May 2, and May 21, 2025 met the procedural and substantive requirements of offering Student a FAPE such that Kern may implement the IEP without Parents' consent, should Parents continue to seek special education and related services.

ISSUE 2: IS KERN ENTITLED TO CONDUCT ASSESSMENTS OF STUDENT IN EXECUTIVE FUNCTIONING AND SOCIAL EMOTIONAL PROCESSING?

Kern contends that it is entitled to assess Student in executive functioning and social emotional processing because it determined that further assessment in those areas was warranted and has taken reasonable measures to obtain Parents' consent with no response.

Reevaluations of students with disabilities already eligible for special education under the IDEA help IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.)

The IDEA provides for reevaluations, referred to in California as reassessments, to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

A reassessment must be conducted, even more often than once every three years, if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reassessment, or if the student's parents or teacher requests a reassessment.

(20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School Dist.* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (nonpub. opn.).)

KERN DETERMINED REASSESSMENT WAS WARRANTED

At the May 21, 2025 IEP, the IEP team determined that it wanted more information on why Student had stopped attending speech therapy and was not completing homework in some classes. IEP team members were concerned that Student might be experiencing frustration or might have executive functioning deficits not apparent from the psychoeducational assessment results obtained in October 2024.

Kern IEP team members determined that Student's educational or related services needs, including improved academic achievement and functional performance, warranted reassessment. Student might have developed new educational needs, or a deeper dive into Student's executive functioning and processing might provide the team with more information to address Student's reduced work production.

The May 21, 2025 IEP team requested that Kern obtain further assessments in processing, executive functioning, and social emotional processing. The team agreed it would reconvene an IEP team meeting to review the results. Only the assessments in executive functioning and social emotional processing are at issue in this proceeding.

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KERN TOOK REASONABLE MEASURES TO OBTAIN PARENTAL CONSENT

Reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(i); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, § 56321, subds. (a) & (b).) The notice consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion state law. (*Ibid.*)

The proposed assessment plan is required to contain certain information, including but not limited to, an explanation of the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b).)

The assessment plan must be in a language easily understood by the general public. It must be provided in the native language of the parent or other mode of communication used by the parent. It must also explain the types of assessments the school district proposes to conduct and state that an IEP will not result from the assessment without the consent of the parent. (Ed. Code, § 56321, subds. (b)(1)-(4).) The school district must give the parent 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

Parental consent need not be obtained for the reassessment of an individual with exceptional needs if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the parent of the child has failed to respond. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).)

If a parent does not consent to a reassessment plan, the school district may, but is not required to, request a due process hearing to obtain permission to conduct the reassessment without parental consent by establishing that the assessment is necessary and that the school district is lawfully entitled to reassess the student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3), 56506, subd. (e).)

On July 17, 2025, Kern prepared and sent a proposed assessment plan to Mother for the reassessments requested by the May 21, 2025 IEP team. Kern sent the assessment plan by regular U.S. mail, certified mail, and FedEx priority overnight. Copies were also emailed to both parents.

The assessment plan was entitled "Prior Written Notice – Assessment Plan." The assessment plan explained the types of assessments to be conducted and the personnel who would be conducting the assessments, including:

- Social and emotional status to determine how Student feels about himself and gets along with others, to be performed by a school psychologist, and
- Other areas of assessment including psychological processing and executive function, by a school psychologist.

The July 17, 2025 assessment plan was in language easily understood by the general public. It was provided in English, Parent's native language. It explained the types of assessments Kern proposed to conduct and stated that an IEP would not result from the assessment without the consent of Parents.

The July 17, 2025 assessment plan gave Parents prior written notice that Kern sought to conduct additional assessments of Student. It included a description of the action proposed, and an explanation why Kern proposed the action. It also contained a description of each assessment procedure, assessment, record, or report used as a basis for the proposed action. It explained that Kern was seeking additional assessments of Student by referral from Student's IEP team to determine Student's special education services needs.

The July 17, 2025 assessment plan also included a statement that Parents had protection under the procedural safeguards, and included an attached copy of parental rights and procedural safeguards, and sources for Parents to contact to obtain assistance. Lastly, the assessment plan stated that Student's educational records were reviewed and alternative interventions considered, but that these were rejected by Kern as Student had been identified as requiring additional evaluations at that time.

Kern waited over 15 days for Parents to review, sign, and return the proposed assessment plan. Neither parent responded, and the certified mail receipt for July 17, 2025 mailing to Mother was returned by the Post Office as undelivered.

On August 8, 2025, Treadwell sent a prior written notice regarding the May 2 and 21, 2025 IEP to Mother by regular U.S. mail and certified mail. She sent the prior written notice to both parents by email, with apologies for contacting them by email, but stating Kern had not received a response from Parents by any other means. The August 8, 2025 prior written notice also contained a copy of the May 21, 2025 IEP, a copy of the July 17, 2025 assessment plan for Parents' signature, and a copy of parental rights and procedural safeguards.

Kern received no response to the August 8, 2025 letter.

On September 12, 2025, Kern's attorneys in this proceeding sent a copy of the due process complaint to Mother and received a long automated email response. In that response, Mother reiterated that she would not respond to email from Kern, and all communication must be sent to Mother's home in paper form.

Kern made reasonable efforts on July 17, and August 8, 2025, to obtain Parents' signature on the July 17, 2025 assessment plan. In consideration of Father's request that Mother make educational decisions for Student, Kern directed correspondence to Mother, with emailed copies to Father. Kern honored Mother's request for regular and certified mail, and additionally arranged for FedEx overnight services, but received no response from Mother or Father. Despite repeated mailings, presumed to have been received, Parents did not respond to the proposed assessment plan.

Here, where Parents have a long history of refusing to respond to Kern's requests for parent participation in Student's educational decisions, no further attempts to obtain consent to the assessment plan were required.

Kern proved by a preponderance of the evidence that reassessment of Student in executive functioning and social emotional processing was warranted, and that it made reasonable, but unsuccessful, attempts to obtain Parents' consent to the July 17, 2025 proposed assessment plan.

Accordingly, Kern is entitled to reassess Student in executive functioning and social emotional processing without Parents' consent.

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CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1:

Kern's IEP offer, developed on May 2, and May 21, 2025, constituted a FAPE such that Kern may implement the IEP without parental consent.

Kern prevailed on Issue 1.

ISSUE 2:

Kern is entitled to conduct assessments of Student in executive functioning and social emotional processing, pursuant to the July 17, 2025, assessment plan, without parental consent.

Kern prevailed on issue 2.

ORDER

1. Kern may implement Student's May 21, 2025 IEP without parental consent.
2. Kern may assess Student in executive functioning and social emotional processing, pursuant to the July 17, 2025 assessment plan, without parental consent.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

ALEXA HOHENSEE

Administrative Law Judge

Office of Administrative Hearings